

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 817 of 1984

Date of decision: 13-09-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNA TALUKA KHEDUT SAHAKARI KHAND UDYOG MANDALI LTD

Versus

PARSOTTAMBHAI HARIBHAI

Appearance:

MR ND NANAVATI for Petitioner

MR A.D. Pithani for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/09/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

Challenge is made by the petitioner to the order annexure-F dated 13-9-83 made by the Industrial Court, Gujarat State, Ahmedabad, in Appeal (IC) No.27/82. The facts necessary for decision of this petition, briefly

stated, are as follows:

Respondents No.1 to 11 were taken in employment of the petitioner on daily wage basis and they were employed in the crushing season only. Resolution has been passed by the petitioner on 18th January, 1980 deciding thereunder to give these daily wagers regular and permanent employment. In pursuance of the said resolution orders came to be made on 29th January 1980 under which some daily wagers were made permanent from 1-1-1980 and they were given grade of the post with D.A. and other benefits. Under order of the same date other daily wagers were also made permanent. It appears that the Union has made some objections against the orders made for giving permanent status to the daily wagers and in pursuance to that objections the order dated 4-2-1980 has been made under which the earlier two orders were suspended. Thereafter the services of the respondents were dispensed with. The matter was taken by the respondents by filing application before the Labour Court. But the Labour Court has dismissed the application, against which they filed appeal before the Industrial Gujarat. The Industrial Court allowed the appeal under the impugned order and both the orders dated 4-2-1980 and 20-2-1980 under which the services of these persons were discharged were quashed and set aside.

2. The counsel for the petitioner contended that the application filed by the respondents under section 42 of the Bombay Industrial Relations Act, 1946 was not maintainable. It has next been contended that it was only a case of seasonal employment and as such there was no justification to make them permanent in the employment. On the other hand, Mr. Mithani, learned counsel for the respondents contended that the order dated 4-2-1980 was illegal and arbitrary as it has been made in violation of the principles of natural justice. Under order dated 29th January, 1980 the respondents were made permanent in service which conferred valuable right upon them and before any order taking out those benefits was passed the principles of natural justice was required to be complied with. It is a case where the service conditions of the respondents have been changed and that too without giving any opportunity of hearing to them. It has lastly been contended that the resolution has been passed by the petitioner itself deciding to grant permanent status to the respondents. Therefore the subsequent order made on the objection of the Union was arbitrary and illegal.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

It is not in dispute that in pursuance of the interim order the respondents are continued in service and they are getting all the benefits, though on furnishing security to the satisfaction of the labour court for restoration of the benefits in case this writ petition succeeds. It is not the case of the petitioner that objections which were raised by the Union still persist against the respondents. The petitioner has also not come come up with the case that the respondents have not shown their worth on the post on which they have been made permanent. It is also not the case of the petitioner that the respondents are not satisfactorily discharging their duties on the post on which they have been made permanent.

4. The Industrial Court, in the impugned order, rightly held that the change which has been made under the order dated 4-2-1980 was illegal under section 46(4) of the Bombay Industrial Relations Act. The status of the respondents has been changed from daily wagers to that of permanent employees under the order dated 29th January, 1980. Moreover, under order dated 4-2-1980 the earlier orders were suspended, but the petitioner has not produced the ultimate decision taken. The change which has been made has resulted in the conversion of the status from permanent to daily wagers and discharged from service. Leaving apart the question whether the matter directly falls under section 46 or not, the order dated 4-2-1980 which has been made against the respondents has admittedly been made without giving notice and opportunity of hearing to them. The order dated 4-2-1980 resulted in serious civil consequences as the status of the respondents has been converted from permanent employees to that of daily wagers. If those are the consequences, certainly it is a case of change of service condition and the principles of natural justice were required to be followed by the petitioner. Not only this, the further consequence of that order was discharge of the respondents from service, which is not only serious but also affects their very livelihood. Before discharging from service the respondents have not been heard. Justification given for termination or discharge from service without notice or giving opportunity of hearing is that they were only in seasonal employment and daily wagers has no substance. This court cannot lose sight of the fact that under the order dated 29-2-1980 which was made in pursuance of resolution dated 8-1-1980 permanent status was conferred on the respondents. Yet there is another reason for which I do not consider it proper to interfere with the order made by the Industrial Tribunal. This court sitting under Article 227 of the

Constitution will not act an appellate authority over the decision of the Industrial Court. If the contention of the petitioner is accepted and the order of the Tribunal is set aside, the consequence would be restoration of the orders dated 4-2-1980 and 20-2-1980. These orders, as stated earlier, are ab initio illegal as the same have been made in violation of the principles of natural justice. This court will not restore an illegal order sitting under Article 226/227 of the Constitution of India.

5. The respondents have been working as permanent employees for all these years to the satisfaction of the superior officers. No complaints whatsoever are there against their working and they are continuing in service for last more than twelve years. This is yet another fact which persuaded this court not to interfere with the order of the Industrial Court.

6. In the result the special civil application fails and the same is dismissed. Rule discharged.

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